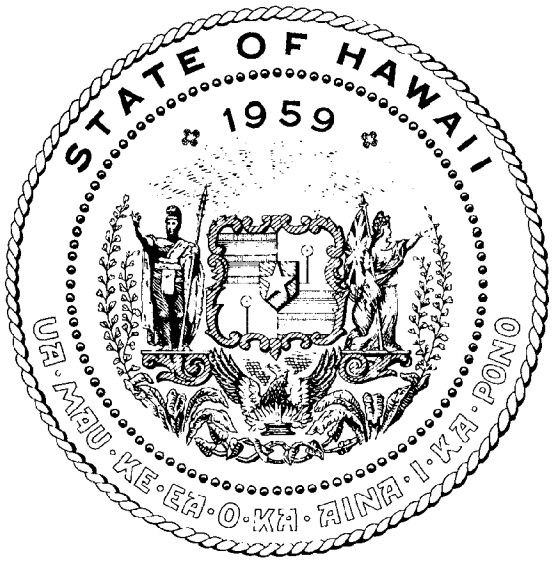
THE HAWAII COASTAL ZONE MANAGEMENT LAW

An Assessment



Department of Planning and Economic Development

THE HAWAII COASTAL ZONE MANAGEMENT LAW

An Assessment

in response to Act 126, Session Laws of Hawaii 1982

Prepared by the Hawaii Coastal Zone Management Program
Department of Planning and Economic Development
State of Hawaii

January 1984

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FOREWORD

Hawaii's coastal resources are integral to our Island lifestyle. In recognition of this, the Hawaii Coastal Zone Management Law was enacted in 1977 as a management guide for the beneficial use, protection, and development of the valuable land and water resources in the coastal zone. Guidelines were enacted to manage developments along the coastline, assuring that adequate consideration is given to protect the valuable recreational, historic, scenic, ecosystem, and related environmental and ecological resources while allowing economic growth.

After five years of implementation, the State Legislature appropriately directed the Department of Planning and Economic Development to review the accomplishments and impacts of the law.

> "Be it further provided that the department of planning and economic development, in consultation with the authorities, is directed to conduct a statewide survey and overall assessment as to the manner in which Chapter 205A, Hawaii Revised Statutes, and the counties' implementation thereof has affected development projects impacted by the law. The survey and assessment should also include a review of the following: 1) future funding sources for the administration of the program, 2) the relationship between Chapter 205A, Hawaii Revised Statutes and Chapter 343, Hawaii Revised Statutes, and 3) a review of special management area minor permits issued to date so as to evaluate the effectiveness of total cost of fair market value figures originally established by Section 205A-22, Hawaii Revised Statutes, and to recommend amended criteria, as appropriate."
>
> Act 126, SLH 1982

Unchecked, regulatory programs can result in an overwhelming burden to economic development. With this premise, I believe that this assessment of the Coastal Zone Management law is particularly timely. In this way, we can assure that its orientation provides the much needed perspective to streamline and simplify the permit process to help economic growth while preserving the environment which makes Hawaii a desirable place to live.

I am, therefore, pleased to present this report of our assessment of the Coastal Zone Management law.

Kent M. Keith
Director of Planning
and Economic Development

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THE HAWAII COASTAL ZONE MANAGEMENT LAW

I. EXECUTIVE SUMMARY

Act 126, SLH 1982, required the Department of Planning and Economic Development to assess the implementation of the Hawaii Coastal Zone Management (CZM) Law, Chapter 205A, Hawaii Revised Statutes. The basic charge is an overall assessment of the Hawaii CZM Program and the Counties' administration of the Special Management Area (SMA) with respect to the effects on development projects in Hawaii. Recommendations in this report were formulated when opportunities for improvements were identified. The County agencies administering the SMA permit and the CZM Statewide Advisory Committee contributed significantly to the preparation of this report.

A. OVERALL PROGRAM IMPLEMENTATION

Federal CZM grants have, over the past five years, supported basic program functions and significant initiatives which would not otherwise have been possible. With the impending termination of Federal CZM implementation grants, the U.S. Congress is actively pursuing funding for Federally-approved CZM programs through revenues from the leasing of outer continental shelf (OCS) tracts. Congress is also considering the reappropriation of Section 306 program implementation grants.

> Recommendation #1: Hawaii should continue its CZM program in a mannner which will maintain its Federally-approved status to qualify for OCS revenue sharing funds or other funding sources.
>
> Recommendation #2: Hawaii should identify and prioritize its coastal management needs and potential initiatives in the form of a long term work plan which would be implemented with the continuation of CZM funding.

Federal Consistency

The Federal consistency provisions afford the State the opportunity to review, influence, condition, and negotiate Federal agency decisions affecting land and water resources. Although this procedure has been particularly effective for reviewing Federal agency actions which otherwise would not have been reviewed by the State, there were many projects reviewed that were insignificant with regard to coastal impacts.

> Recommendation #3: Streamline Federal consistency reviews of Army Corps permits and increase emphasis on direct Federal agency actions.

Relationship of Chapters 205A, HRS, and 343, HRS

An assessment of the relationship between the CZM and the Environmental Impact Statement (EIS) laws suggests that although some of the informational requirements overlap, the EIS process involves a more comprehensive assessment of environmental and social impacts than the coastal concerns covered by the CZM policies

and SMA guidelines. In view of the potentially significant implications of combining Chapter 343 and 205A environmental considerations, discussions and recommendations should be presented to the Inter-Agency Task Force for State Permit Simplification for its consideration.

B. SPECIAL MANAGEMENT AREA PERMIT

The County Special Management Area (SMA) Permit system is the State's single most direct means of managing development in coastal areas. Overall, the survey and monitoring data indicate that the Counties' administration of SMA permits has been effective in implementing the CZM policies and guidelines. The permit is particularly useful in assuring public access and preserving historic sites.

> Recommendation #4: The County SMA permit systems should continue to be fully supported.

SMA Boundaries

Adjustments to the SMA boundaries could improve permit efficiency and effectiveness by limiting the SMA to those areas in which developments have impacts of CZM concern. The evolution of coastal resource management in Hawaii suggests that periodic "fine-tuning" of SMA boundaries may be warranted.

> Recommendation #5: The DPED should examine and update SMA boundary criteria to reflect current coastal concerns and recently developed coastal resource information.

Public Participation

Public participation in the SMA permit process remains a concern with respect to its role in various land use decisions and its effect on the time and expense necessary to obtain permits.

> Recommendation #6: Within the context of the State's permit simplification efforts, the DPED should examine and propose recommendations for strengthening the relationship among the various land and water development permitting processes to facilitate meaningful public participation.

> Recommendation #7: In consultation with the Counties and the Governor's Inter-Governmental Task Force for Permit Simplification, the DPED should review contested case experiences and formulate recommendations for improvements.

Permit Streamlining

Most permit streamlining concerns were beyond the scope of the study and should be more appropriately addressed by the DPED through its work with the Inter-Agency Task Force for Permit Simplification. Coordinating SMA permit processing with general plan amendments and zoning change requests, however, appears to be a more immediate opportunity.

Recommendation #8: Clarify the SMA guideline requiring consistency with County general plans and zoning to assure that concurrent processing of the SMA permit is permissible. Further, delete the reference to "subdivision codes" and "other applicable ordinances" to eliminate potential contradiction with Section 205A-29(b), HRS:

"§205A-26(2). No development shall be approved unless the authority has first found:

(C) That the development is consistent with the county general plan and zoning ordinances. Such a finding of consistency does not preclude concurrent processing where a general plan or zoning amendment may also be required."

Exemptions

Providing exemptions to the definition of "development" is a way to assure that only those activities of potential CZM concern are reviewed. The following additional exemptions are recommended.

Recommendation #9: Add the following exemptions, as underscored below, to the definition of development, Section 205A-22, HRS:

Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors. Low profile utilities might include fire hydrants but not utility poles.

Subdivision of land into four or fewer parcels when no associated construction activities are proposed. Subdivisions of this scale do not substantially increase density.

Structural and non-structural improvements to existing single-family residences including additional dwelling unit, where otherwise permissible. This would explicitly extend the exemption for construction of single-family dwellings to related improvements such as patio enclosures, garages, ohana dwellings, and re-roofing.

Non-structural improvements to existing commercial structures. Examples include facade renovation, landscaping, and sidewalk construction.

With respect to reconstruction following natural disasters, the Counties felt better management could be attained by requiring an SMA emergency permit rather than exempting such activities altogether.

Recommendation #10: Amend Section 205A-22,(5), HRS, to read:

"Special management area emergency permit" means an action by the authority authorizing development in cases of emergency requiring immediate action to prevent substantial physical harm to persons or property or to allow the reconstruction of structures damaged by natural hazards to their original form, provided that such structures were previously found to be in compliance with requirements of the Federal Flood Insurance Program. (Addition underscored)

Major/Minor Permit Criteria

The criteria for determining which development activities must undergo the rigorous scrutiny of the major SMA permit process have significant implications on the effectiveness of the permit and on the time and cost incurred by developers and permit administering agencies. The existing cost criterion was determined to be overly inclusive, requiring major SMA permits of projects having no significant adverse impacts.

Recommendation #11: Raise the cost criteria from $65,000 to $100,000 as an interim measure, and examine and formulate guidelines for Counties to base determinations of major and minor permit requirements.

The interim solution would relieve some of the major permit burden until more effective criteria can be developed.

II. OVERALL PROGRAM IMPLEMENTATION

The Hawaii CZM Program, embodied in Chapter 205A, Hawaii Revised Statutes (HRS), is a statewide management guide for the beneficial use, protection, and development of the land and water resources in the State's coastal zone. It provides an effective coastal perspective for governmental agencies and the private sector in maintaining Hawaii's unique and limited coastal resources while providing for its major economic activities and recreational needs.

The National CZM Act of 1972 was a catalyst for strengthening Hawaii's legislative requirements for the protection and development of the State's coastal resources. In 1973, the Legislature enacted Act 164 to develop a comprehensive statewide CZM program. In 1977, the Legislature enacted Act 188. This law established objectives and policies to guide State agencies and County governments in actions affecting the coastal zone. This shared management approach was supported by the legislative finding that the coastal zone was overregulated and undermanaged. The CZM objectives and policies, therefore, provide a more coordinated and articulated framework for governmental decision-making relative to land and water uses in the coastal zone.

The coastal zone in Hawaii is defined as all coastal waters seaward to the limit of the State's jurisdiction and all land area excluding State forest reserves and Federal lands. Coastal areas which deserve more intensive management controls are designated SMA's in each County. They extend inland from the shoreline to a minimum of 100 yards.

A number of State agencies actively participate in implementing the CZM program. They include the Land Use Commission, the Environmental Quality Commission, the Department of Land and Natural Resources (DLNR), the Department of Health, and the Department of Transportation. They help to enforce and implement the Hawaii CZM Act by assuring that proposed development projects requiring permits or approvals are consistent with the objectives and policies of the CZM law. Permits are denied or conditions are imposed on approvals to assure that adverse coastal impacts are mitigated to the greatest extent possible.

The four County governments have a key role in implementing the Hawaii CZM Program. The SMA represents the intensive management area of the State's coastal management system, with permit guidelines intended to assure that development along Hawaii's coastlines are fully compatible with the State's resource management objectives. Each development proposed within the SMA is reviewed by the County authority for potential adverse environmental impacts and for compliance with the CZM program.

When Hawaii's CZM Program was approved by the U.S. Secretary of Commerce in 1978, the State became eligible for receiving grants-in-aid under Section 306 of the National CZM Act. As lead agency, the DPED received and allocated funds to support basic program functions and selected projects for improving coastal management.

CZM Program Activities

The Hawaii CZM Program directly influences development. The Counties' administration of the SMAs is the single most direct means for assuring that coastal developments properly accommodate public concerns and are fully compatible with the recreational, historic, scenic, coastal ecosystems, coastal hazards, and economic uses policies of the CZM law.

As lead agency, the DPED monitors State and County actions for consistency and compliance with the legislative policies. For State approvals and reviews such as land use district boundary amendments, conservation district use applications, environmental impact statements, and the project notification and review system, DPED provides comments and recommendations regarding CZM impacts. Quarterly monitoring reports are prepared in accordance with Federal and State requirements to assure statewide compliance in implementing the CZM policies. They provide summaries of significant reviews and graphic analyses of impact mitigation which help to identify patterns of non-compliance.

The DPED is also empowered to administer the Federal consistency provisions of the National CZM Act. Under these provisions, Federal government activities undertaken in a state's coastal zone must be consistent, to the maximum extent practicable, with the state CZM program. Federal consistency thereby affords the State the opportunity to review, influence, condition, and negotiate Federal agency decisions affecting land and water resources. This review process represents a milestone modification of traditional Federal supremacy since Federal agencies can no longer act independently of or in conflict with Hawaii's coastal planning and regulatory policies.

The consistency review requirement has been particularly useful and effective for reviewing Federal agency actions not subject otherwise to State requirements. Military operations; the acquisition, management, and release of Federal lands, and the promulgation of Federal regulations and permit issuances must now be coordinated with the State during the planning phase. The State's concurrence with a proposed Federal action is required on the basis of consistency with the State's CZM objectives, policies, laws, and regulations. Although most Federal activities are found consistent with the Hawaii CZM Program, the State benefited from this review process as illustrated by the following case examples:

Kaneohe Marine Corps Air Station Danger Zone: Proceeding with the designation of an off-shore danger zone to prohibit public access during hazardous weapons firing exercises on Mokapu Peninsula, the Marine Corps initially disregarded comments by the State DLNR.

The DPED objected to the proposed designation, finding that public safety could be assured while preserving public recreational use of the affected waters and avoiding possible conflicts with DLNR staff visits to the State-owned Moku Manu Island bird sanctuary within the proposed zone. Subsequently, the Marine Corps adopted the recommended measures and reduced the size of the zone.

Barbers Point Deep Draft Harbor: The DPED assisted the U.S. Army Corps of Engineers and the State Department of Transportation in preparing a Federal consistency analysis used to support the State's petition for Land Use Commission approval for the Barbers Point Deep Draft Harbor. More recently, the DPED coordinated State agency interests and environmental concerns pertaining to the shoreside facility development and harbor construction to assure project feasibility.

Sale of Federal Lands: Asserting that the Federal government's decision to release and sell properties affected the State's interest and ability to manage its resources in accordance with CZM policies, the State joined the Coastal States Organization to support California in California v. Watt, before the U.S. Supreme Court. The Court subsequently ruled that leasing of Outer Continental Shelf (OCS) lands, which

lie outside of State coastal zones, did not affect those coastal zones and are, therefore, not subject to State review. On the other hand, it also ruled that development plans and permits for exploration and production are subject to State review. Inasmuch as Hawaii is concerned with the disposal of Federal lands within its coastal zone, the DPED is currently examining the implications of the Supreme Court's ruling.

Spiny Lobster Fishery Management Plan: The DPED objected to implementation of the Spiny Lobster Fishery Management Plan by the National Marine Fisheries Service since the plan's proposed minimum size limit and other rules conflicted with State law. Subsequently, a unified Federal/State system of management standards was established, averting potential enforcement problems.

A major objective of the Hawaii CZM Program is to "improve the development process, communication, and public participation in the management of coastal resources and hazards." (Section 205A-2(b)(7), HRS.) Numerous CZM initiatives were funded for the purposes of this objective.

Public involvement in the development of the CZM program was extensive. During program implementation, however, the Statewide Advisory Committee, which is comprised of members from public, private, and special interest organizations, meets monthly to discuss CZM issues and advise the DPED on matters of public interest. Previously, the DPED published the Hawaii Coastal Zone News, developed a slide show for presentation to interested groups, and co-hosted a Year-of-the-Coast celebration at the Aloha Tower.

The CZM Program also produced other permit-related publications which include: an "EIS Handbook" which presents the basic procedures and applicability of the State EIS process; "Hawaii's Coastal Zone Permit and Approvals" which provides an overview of the major development permits within the CZM network; "Coastal Concerns Guide" which provides guidance to agency and development interests on interpretation of the coastal policies; and "Procedures Guide for Achieving Federal Consistency with the Hawaii Coastal Zone Management Program."

The availability of resource information offers predictability to developers by providing advance knowledge of development constraints. It also facilitates decision-making for permitting agencies. A methodology was developed for determining erosion-prone areas along Oahu's shoreline which threaten existing and future developments. To facilitate the identification of historically sensitive areas, cultural resource maps were prepared for the State Historic Preservation Office. In addition, public concerns over shoreline access have resulted in several County efforts to inventory and evaluate beach rights-of-way.

Several planning initiatives were also undertaken by the DPED in response to development-related problems and issues:

Permit Simplification Task Force: To address the problem of red tape in permit processes, the Governor established the Inter-Agency Task Force for State Permit Simplification. The Task Force developed recommendations for implementing State reform measures such as joint reviews, departmental master applications, development exemptions, and streamlining the environmental impact statement and Land Use Commission procedures. Twenty recommendations were approved by the Governor in 1982, and many of these have already been implemented. Work is currently underway to integrate State regulatory activities with those of Federal and County agencies.

Hawaii Planning Activities Support System (H-PASS): An automated system was developed to enhance permit monitoring, permit coordination, and coastal land and resource information sharing among nine of the major State and County permitting and coastal resource management agencies. Participating agencies include the State Departments of Planning and Economic Development, Land and Natural Resources, Health, Transportation, Office of Environmental Quality Control, the Planning Departments of the Counties of Maui, Hawaii, and Kauai, and the City and County of Honolulu's Department of Land Utilization. The H-PASS employs remote terminals stationed at the user agencies to facilitate data entry and data inquiries. Permits stored on the H-PASS include State permits and approvals such as land use district boundary amendments, conservation district use applications, environmental impact statements, and all of the Counties' SMA permits. Data supporting land use planning include the State capital improvements program and County of Hawaii land use inventory, while resource inventories include significant historic and archaeological sites, coastal resources and hazards, and statewide energy activities. Significant potential exists for the system to serve as a central planning and permit repository which can improve coordination among agencies and facilitate responses to public requests for information.

Ocean Management Plan and Leasing Study: In consideration of increasing demands on Hawaii's ocean resources, a management plan is being prepared to establish State policies for managing Hawaii's marine resources. With emphasis on potentially conflicting activities in offshore coastal zone areas, the plan covers a wide range of issues: beach erosion, fisheries, mariculture, nearshore recreation, manganese nodule mining, ocean thermal energy conversion, harbors development, ocean waste disposal and accidental spills, coastal energy facilities, and marine conservation and protection. To facilitate economic development in offshore areas, a study was funded to address the licensing and leasing of ocean space for activities such as mariculture and OTEC. A legislative proposal to effectuate this has been under consideration the Legislature.

Kawainui Marsh Resource Management Plan: A resource management plan was formulated to develop and protect the State's largest freshwater marsh. The DPED established a technical and policy advisory committee to help resolve a longstanding controversy over land use in and around the marsh. Approved by the Governor for implementation, specific recommendations are provided for acquisition of lands and for guiding surrounding development in a manner which preserves the ecological and cultural values of the marsh.

Relationship Between Chapter 343 and Chapter 205A

The State's EIS law, Chapter 343, HRS, requires the disclosure of environmental impacts for private actions in the State's conservation district, the shoreline setback area, sites in the national or Hawaii Register of Historic Places, within Waikiki, or proposed developments requiring a County general plan amendment. The EIS requirements also apply to public development projects involving State or County lands or funds.

CZM approvals - County SMA permit and DPED's Federal consistency review - have procedures which require the applicant's assessment of project impacts. When an EIS is required, this document is used for disclosing CZM concerns. When not required, the applicant prepares an assessment tailored more specifically to the CZM objectives, policies, and SMA guidelines as appropriate. Only the City and County of Honolulu has chosen to directly incorporate Chapter 343 assessment procedures in its SMA ordinance and processing procedures.

The DPED comments on the adequacy of EIS's to ensure that they substantially address CZM policy considerations. Negative declarations issued for projects without significant impacts are also monitored on a quarterly basis.

Although there are overlapping environmental considerations in the assessment procedures, the EIS process entails a more comprehensive assessment of environmental impacts than that covered by the CZM policies and SMA guidelines. Unlike the City and County of Honolulu, Neighbor Island planning authorities have elected not to use the Chapter 343 assessment process for SMA permits, reasoning that the EIS process might lengthen the SMA processing time without attendant benefits to coastal resources protection. Preliminary discussions with the Office of Environmental Quality Control, however, indicate that combining the assessment requirements may be accommodated without additional time impositions. Further discussions on this matter are warranted, perhaps in conjunction with the State's Inter-Agency Task Force for Permit Simplification.

Future Funding

Since 1974, Hawaii received nearly $7 million in Federal funds for the development and implementation of its CZM program. Under Section 306 of the National CZM Act, annual grant-in-aid awards were obtained on an 80 percent Federal - 20 percent State matching basis. The Federal administration, however, will be discontinuing fiscal support of the program as part of the national budget cutback scheme.

With the impending termination of Federal funding support, a strong movement is underway in Congress to find an alternate funding source for the several Federal ocean and coastal programs. Congress is seriously considering an Outer Continental Shelf (OCS) oil and gas revenue sharing program which proposes funding for various ocean and coastal programs from monies paid to the Federal government from the exploration and development of gas and oil within the continental shelf.

The Mineral Leasing Act of 1920 is the rationale for OCS revenue sharing. Under this law, inland States receive royalties from the minerals taken from leased public lands within their borders. Proponents of OCS revenue sharing are also arguing that reductions in CZM program funding would effectively reduce the ability of affected States to process permits and consistency determinations, causing delays in OCS development. Costs to the Federal government in terms of revenues lost due to delay are approximately $1 billion a year.

Two major bills dealing with OCS revenue sharing were introduced in the House of Representatives and the Senate in 1983. They are similar in that they provide: 1) a formula for determining the amount of monies to be taken from OCS revenues; 2) a minimum allocation to each State and criteria for dispersement of the remainder of the funds among the States; and 3) guidelines for the use of funds within the programs. Hawaii may be eligible to receive $2 to $7 million annually.

The Federal administration has been opposed to OCS revenue sharing and recommended its elimination from Congressional consideration. In addition, OCS revenues have been earmarked for general Treasury receipts in the administration's economic program through 1985. Against this opposition and general budgetary restrictions is the firm backing of CZM supporters, including 28 States and Territories

with CZM programs, who advocate the continuing need for funding of coastal management programs so that coastal issues can be coherently and comprehensively addressed. They argue that the national interest prompting the initiation of CZM programs should not be forgotten and the progress achieved during the first 10 years not be set aside.

The outlook for the passage of OCS revenue sharing is optimistic, although the time frame for its enactment and subsequent implementation is uncertain at this time. Meanwhile, Congress may decide to reappropriate Section 306 grant-in-aid awards over the wishes of the Federal administration. All of this translates into an unclear picture of the program's future funding sources.

Findings and Recommendations

Hawaii has benefitted from the CZM program. Basic management functions and significant initiatives have been undertaken to improve coastal resource management. As the State grows, however, there will be an ongoing need to maintain a balance between a healthy economic climate and preserving the physical qualities which make Hawaii a desirable place to live and visit.

Continuing its Federally-approved program status will enable Hawaii to be eligible for future Federal funding support. It will also allow the State to retain its consistency review authority over Federal actions.

> Recommendation #1: Hawaii should continue its CZM program in a manner which will maintain its Federally-approved status to qualify for OCS revenue sharing or other funding sources.

> Recommendation #2: Hawaii should identify and prioritize its coastal management needs and potential initiatives in the form of a long term work plan which would be implemented with the continuation of CZM funding.

The Federal consistency provisions are especially important and are a valuable tool in view of the significant military presence in Hawaii and extensive proposals for Federal land sales. At the same time, however, many minor reviews of Army Corps permits are also subject to consistency review. Opportunities to simplify procedures should be pursued when CZM concerns are unlikely to exist.

> Recommendation #3: Streamline Federal consistency reviews of Army Corps permits and increase emphasis on direct Federal agency actions.

III. COUNTY IMPLEMENTATION OF SPECIAL MANAGEMENT AREAS

This part reviews the Counties' implementation of the SMA permit provisions. Discussed are permit processing, the permit's role as a land use control mechanism, summaries of the number and types of developments reviewed from 1975 to 1982, potential permit streamlining measures, and the criteria used to distinguish major from minor SMA permits.

To gauge the perceptions of individuals and organizations with direct interest in or experience with the permit process, a comprehensive survey was undertaken in January, 1983. A questionnaire covering nearly all aspects of the SMA permit process was sent to a range of private and public developers and applicants, Federal, State, and County agencies, and environmental and civic interest groups. Of 240 questionnaires mailed, 69 responses were elicited--a 30% response rate. The results are discussed here and summarized in the Appendix, SMA Questionnaire Results.

A. DESCRIPTION OF THE SMA PERMIT PROCESS

The SMA permit is the most direct means through which the objectives and policies of the Hawaii CZM Program are implemented. In accordance with Part II, Chapter 205A, HRS, the Counties of Maui, Hawaii, and Kauai and the City and County of Honolulu have drawn SMA boundaries encompassing critical coastal lands within their respective jurisdictions and administer permits for development activities in these areas. Current SMA boundaries extend a minimum of 100 yards from the shoreline inland, up to several miles in some areas.

The SMA permit was initially established by the Shoreline Protection Act in 1975 and subsequently incorporated into the Hawaii CZM Act of 1977. As specified in Part II of the Act:

> The legislature finds that, special controls on developments within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options, and to ensure that adequate access, by dedication or other means, to public owned or used beaches, recreation areas, and natural reserves is provided. (205A-21, HRS)

Within the framework of each County's planning process, however, proposed developments must also conform with the respective County's general plan, community development plans, specific zoning or subdivision requirements, and other land development regulations.

Basically, two types of SMA permits are issued by the Counties:

- Major permits (statutorily referred to as "use" permits) for developments exceeding $65,000 in valuation or which may have substantial adverse environmental or ecological effect; and

- Minor permits for developments with a valuation of less than $65,000 and which have no substantial adverse environmental or ecological effect.

As a result of legislative amendments in 1979, several development exemptions were allowed, as follows:

- single-family residences;
- repair of existing roads and highways;
- repair of underground utility lines;
- zoning variances except for height, density parking, and shoreline setback;
- repair or interior alterations to existing structures;
- demolition or removal of structures, except historic sites;
- agriculture, horticulture, forestry, animal husbandry, aquaculture, and mariculture;
- transfer of title to land;
- creation or termination of easements, covenants, or other rights in structures or land; and
- land subdivision into lots greater than 20 acres.

Emergency permits, although rarely issued, allow developments in emergencies requiring immediate action to prevent substantial physical harm to persons or property.

The authority to approve or deny applications for major permits is vested in the City Council for the City and County of Honolulu, and in the respective Planning Commissions of the Counties of Maui, Hawaii, and Kauai. The Planning Department in each County, the Department of Land Utilization (DLU) for Honolulu, processes permits and offers recommendations for consideration by the authority. They are also authorized to issue minor and emergency permits.

Below is a tabulation of the number of major and minor permits processed since 1976:

	Honolulu		Maui		Hawaii		Kauai		Statewide	
Year	Major	Minor	Major	Minor	Major	Minor	Major	Minor	Major	Minor
1976	81	94	21	112	26	116	11	9	139	331
1977	58	94	28	160	29	130	7	20	122	404
1978	49	86	26	117	44	109	24	14	143	326
1979	25	74	54	117	14	77	20	10	113	278
1980	35	50	42	120	25	37	12	20	114	227
1981	31	67	38	132	22	33	10	24	101	256
1982	34	50	30	236	12	28	4	9	80	323
Total	313	515	239	994	172	530	88	106	812	2,145

A total of 812 major permits and 2,145 minor permits were issued by the Counties over the seven-year period. Broad categories of activities for which SMA major permits were issued are:

	Honolulu	Maui	Hawaii	Kauai	TOTAL
Residential Multi-Family	18	40	38	24	120
Commercial	41	21	18	8	88
Recreation Facility	41	13	21	11	86
Hotels/Resorts	5	39	16	18	78
Residential-Single-Family*	17	16	14	4	51
Educational Facility	31	4	3	--	38
Land Transportation	12	71	7	2	38
Land Subdivision	18	3	2	2	25
Air Transportation	20	3	--	1	24
Water Transportation	7	4	8	4	23
Water Supply	10	9	3	--	22
Industrial-Light	13	2	4	1	20
Flood Control/Drain	11	4	2	--	17
Industrial-Heavy	5	3	5	3	16
Utilities	9	4	1	--	14
Wastewater Management	11	--	2	--	13
Agriculture	1	--	4	5	10
Other**	44	18	11	4	77

* 1979 amendments to Chapter 205, HRS, exempted single-family residences from the definition of development. Of 51 permit applications, 28 were proposed before June 1, 1979 and 23 after. Those after June 1, 1979, refer only to single-family subdivision proposals.

** "Other" includes aquaculture, excavation/mining, parking facilities, baseyards, forestry, police/fire facility, churches-cemeteries, grading/filing, public institutions, communications, hazardous waste management, research, defense operations, health facilities, shoreline management, dredge disposal, historic recreation, solid waste disposal, energy development, marine resources, and wildlife management.

On the Neighbor Islands, in particular, permit applications for multi-family, commercial, and hotel/resort developments, which are mainly visitor industry-related, are three of the most frequently reviewed categories in the SMA permit process.

Development proposals requiring major permits garner much attention as they are intensively reviewed for consistency with various plans and programs, and for their impacts on coastal resources. Environmental assessments and public notice and hearing requirements are also involved.

Prior to the review of development proposals, extensive consultation between the developer and the respective planning department is encouraged by each County. These early consultations have been extremely helpful in identifying potential development constraints such as protecting archaeological and aesthetic resources; providing public access, infrastructure, and drainage; mitigating flood hazards; and addressing or resolving other coastal concerns in the permit application. In many

instances, major concerns associated with a proposed development will have been thoroughly discussed and substantially resolved by the time permit applications are formally submitted.

The Counties use conditions extensively to mitigate adverse impacts to coastal resources and hazards and to assure conformance with their respective development standards and requirements. In keeping with the CZM "management network" concept, permit applications are routinely referred to all applicable State and County agencies and departments for review. The comments received are incorporated into the staff report and sent to the decision-making body. The report generally includes recommendations for specific conditions to assure compliance with applicable requirements. For example, a hotel-resort complex proposed on undeveloped land planned for resort use would typically be required to provide for public beach access, erosion control, preservation of archaeological sites, water supply and wastewater treatment, and landscaping and visual design considerations as conditions to the SMA permit.

B. ROLE OF THE SMA PERMIT

The guidelines for SMA permit decisions are contained in Section 205A-26, HRS. The most stringent among these state that:

> "No development shall be approved unless the authority has first found:
>
> (A) That the development will not have any substantial adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interests. Such adverse effects shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have substantial adverse effect, and the elimination of planning options; and
>
> (B) That the development is consistent with the objectives, policies, and special management area guidelines of this chapter and any guidelines enacted by the legislature.
>
> (C) That the development is consistent with the county general plan zoning and subdivision codes and other applicable ordinances." (205A-26(2), HRS)

Together with the other guidelines, County authorities are thus charged with protecting coastal resources and assuring that developments are compatible with coastline areas.

The SMA permit, however, is not in itself the major determinant of land use in coastal areas. State land use district boundary amendments, County general plan revisions and amendments, and zoning usually precede the SMA process as the principal determinants of land use. Chapter 205A-29, HRS, establishes the relationship of the SMA permit to other State and County land use controls:

> No agency authorized to issue permits pertaining to any development within the special management area shall authorize any development unless approval is first received in accordance with the procedures adopted pursuant to this part. For the purposes of this subsection, county general plan, state land use district boundary amendments, and zoning changes are not permits. (Section 205A-29(b), HRS)

This provision places the SMA permit function within the broader context of land use laws enabling the State and County to appropriately site development. Once acceptable locations for land uses are determined, the SMA permit requires proposed activities to be examined on a case-by-case basis to assure compliance with the coastal policies and guidelines. Compliance is usually achieved through conditional approval of a permit. When a proposal cannot be conditioned to comply with CZM objectives, policies, and guidelines, the SMA permit is denied.

The complementary role of the SMA permit to other land use policies is not a view generally shared by the public. This is particularly evident when issues relating to siting developments are not resolved in prior land use decisions, such as County general plans or community development plans. In such cases, opposition to land use decisions usually surfaces, albeit inappropriately, during the SMA permit review.

Questionnaire responses concerning the effectiveness of the SMA permit in guiding the location of development confirmed this conflicting perception of the permit's role. While 67% felt that the SMA permit had some degree of effectiveness (somewhat effective to very effective) in guiding the location of development, government agencies and applicants generally agreed that County general plans and zoning as well as property ownership were the primary guides. Three environmental/civic groups, on the other hand, expressed dismay that the SMA permit had not been effective in preventing development, particularly those not dependent upon coastal locations in rural or undeveloped areas.

Conditional approvals of SMA permits frequently require developers to incorporate design features such as public access, avoidance of historic sites, building height limitations, and setbacks from the shoreline or other boundaries. These conditions are frequently more stringent than general plan and zoning standards. About 62% of the survey respondents acknowledged that the SMA permit was effective to some degree (somewhat effective to very effective) in improving project designs. Their comments, however, suggested that the term "design" was narrowly interpreted as referring to aesthetic concerns rather than the range of CZM concerns.

C. EFFECTIVENESS OF THE SMA PERMIT

The effectiveness of the SMA permit is at best difficult to quantify. The survey posed 12 questions regarding the permit's effectiveness in attaining CZM objectives through influences on the design of the development or by preventing it. In descending order, the percentage ofresponses with ratings of "somewhat effective " to "very effective" were as follows:

--	ensuring adequate beach and shoreline access	82%
--	protecting historic sites and resources	82%
--	ensuring building height, mass, and other viewplane considerations 70%	
--	minimizing alterations to landforms and vegetation	70%
--	providing setbacks and open space	69%
--	ensuring adequate public recreation areas	68%
--	mitigating flood, tsunami, and other hazards	63%
--	avoiding loss of valuable resources	63%
--	protecting natural ecosystems	61%
--	concentrating coastal dependent development in suitable places	55%
--	ensuring adequate sewage treatment facilities	52%
--	encouraging non-coastal dependent activities to locate inland	48%

Two additional indicators of effectiveness rated were "meeting the needs of coastal dependent economic uses" and "the timely approval of economically important projects." The role and effectiveness of the permit in achieving the first are not clear, as 36% of the respondents indicated "Don't know" or did not respond to this question. The question regarding the timely approval of permits produced the lowest score. The SMA permit process was generally perceived as another layer of review for development projects in the SMA, with 33% of the respondents scoring this aspect as "not effective at all."

Since 1976, the SMA permit process provided the Counties with the opportunity to carefully review coastal developments to assure compatibility with a broad range of coastal resources and hazards. Perceptions of the permit's effectiveness varied significantly among respondents. High ratings were given for the protection of recreational and historic resources and addressing aesthetic concerns. Less effective ratings were given for its ability to guide land use and to facilitate the timely review of developments.

D. APPLICANT VIEWS OF PERMIT IMPACTS ON DEVELOPMENT

The SMA permit process affects applicants and developers most directly. Although coastal management policies reflect public interests, they often translate into costs to the developer. For example, there are costs associated with the time required for permit processing, preparing environmental assessments or special studies, and financing design features which could also affect a project's marketability. SMA permit applicants such as developers, landowners, agents/consultants, and government agencies involved in the construction of public facilities were asked to comment on the nature of these costs and their impacts.

Summarized here are 27 responses in terms of impacts on design, costs, and delays in permit processing, marketability, and predictability of decisions.

Design

The most frequently applied conditions for SMA permit approval are project design requirements. Design considerations are also often discussed during pre-application conferences, and this can motivate applicants to incorporate design features on their own initiative. Applicants could also incorporate design features in their initial designs in anticipation of SMA permit concerns.

In response to a survey question on whether applicants took into account the need to obtain an SMA permit in designing their projects, 13 out of 19 responded affirmatively. Of the 13, however, seven indicated that they considered only the additional time and costs for permit processing. The other 6 indicated that they incorporated special design features. One respondent also indicated that doing so shortened the time required for negotiating with the County.

Permit Processing

Permit processing incurs time and costs required for preparing studies, giving public notice, holding public hearings, and agency deliberations. Although each County has statutorily established time limits at several steps in the process, actual processing time can vary considerably, depending on such factors as the completeness of an application, the adequacy of the environmental assessment or need for an EIS, and whether or not a contested case proceeding is required.

The survey responses indicated that the SMA permit process added from three to nine months to the permit processing time. Two respondents indicated that a year or longer could be required if an EIS had to be prepared.

Perceived redundancies in the SMA environmental assessment and other permit requirements were strongly expressed by a margin of 11 to three. Redundancies were attributed to the range of Federal, State, and County permit processes that may be required for the proposed development. In conjunction with this, many respondents suggested the need for actively pursuing combined processes for information submittal, hearings, and permit administration.

The degree to which development costs were increased due to design requirements is difficult to assess. Only nine of 21 respondents estimated a percentage cost increase, as follows: four (1-5%), three (6-15%), two (15%+). Several suggested that SMA permit costs were undeterminable due to the overlapping permit procedures, while the EIS process was cited three times as a major cost factor. Six respondents commented that time delays were the major cost factor. One respondent felt that ongoing costs associated with the maintenance, liability, and security for public accesses required as a condition of SMA permit approval were significant considerations.

Marketability

Although the intent of the SMA permit is to properly manage valuable coastal resources, increased costs to the developer are ultimately borne by the consumer. In this way, the additional costs attributed to the SMA permit process may affect a project's marketability.

In general, survey respondents did not feel that the SMA permit enhanced their projects' marketability. One commented that public access does not benefit the consumers of resort developments who value privacy. Several suggested that the SMA permit creates high costs and risks, thus, discouraging development. On the other hand, two respondents suggested that those projects which clear the SMA permit "hurdle" gain considerable value due to limited supply. Still another suggested that the length of time between market assessments and the completion of the development project, delayed by permit processes, can cause a developer to "miss" his target market. One commented that, in the long run, the coastal zone is enhanced to the benefit of all.

Uncertainty and Risks

Inasmuch as the costs for a coastal development project can be substantial, and since there is always the possibility that a project can be stopped by denial of the permit, it is important for the developer to know beforehand the extent of his risks. The SMA guidelines in Chapter 205A, HRS, and County ordinances are intended to address a wide range of developments and the potential impacts they may have on the coastal zone. Accordingly, they are less specific than building codes, for example, which detail requirements that must be met for approval. SMA policies and guidelines require a measure of discretion in their interpretation. Conceivably, this discretion reduces predictability in the outcome of the permit decision.

Asked about the adequacy of the guidelines in providing the predictability required to commit themselves to a project, 20 survey respondents indicated that the guidelines were adequate. Notably, those who indicated otherwise were not able to suggest any improvements.

In summary, developer/applicants expressed concerns regarding time and costs involved with permit processing, including permits other than the SMA permit. They also indicated that the SMA permit directly affected the designs of their projects. The responses pertaining to marketability and developer risks are, however, inconclusive.

The survey clearly indicated that efforts to "streamline" the development review process are a continuing need. The existing system of land use controls is perceived as a cumbersome patchwork in which the SMA permit is but one of several that contributes severe constraints on development. Except for raising the threshold dollar criterion distinguishing major from minor permits, however, there were no other suggestions for improving the CZM permit process.

E. PUBLIC PARTICIPATION

Encouraging public participation is a major policy of the Hawaii CZM Program. In the SMA permit process, public hearings are required for all major permits. In the Counties of Maui, Kauai, and Hawaii, hearings are conducted in accordance with Chapter 91, HRS, which establishes administrative procedures for the planning commissions' actions on SMA permits. Chapter 91 requires a contested-case hearing procedure in the event of an objection to the issuance of an SMA permit. This procedure is modeled after courtroom proceedings whereby parties to the proceedings are identified and given standing, witnesses called to testify, evidence presented and argued, and findings made on the case record. In the City and County of Honolulu, where the City Council is the SMA permit authority, Chapter 91 is not considered applicable, and a legislative proceeding is used.

There was consensus among respondents that ample opportunity for public participation exists. Major concerns were expressed, however, regarding the role of the public in permit decisions. Civic/environmental groups commented favorably on the use of contested-case proceedings, while developer/applicants felt that public hearings are generally redundant, time consuming, and costly, especially contested-case hearings. Several indicated that the public seeks involvement only to stop development, that irrelevent testimony is often presented, and that most hearings were sparsely attended.

Where amendments to State land use district boundaries, County general plans, and zoning are not required, the SMA permit is usually the first opportunity for the public to express its views on a specific development proposal. If there is opposition to the proposal, concerns that should be addressed in general planning or zoning decisions, are frequently at issue. Such decisions would already have been made, however, perhaps long before the SMA permit is applied for. In this regard, the SMA permit is sometimes used as a vehicle for community opposition to an approved land use. An example of this is the controversy surrounding the recent consideration and approval of the SMA permit for a resort condominium at Kawaikiunui Bay, Molokai. That project was proposed on a site having the appropriate County general plan and zoning designations but was opposed by the community when the SMA permit was applied for.

One agency commentator suggested that public demands for permit denial tend to be aroused because public hearings are frequently scheduled immediately before the decision is made on the permit. The late scheduling is a consequence of the lengthy public notification procedures. By the time the public hearing is held, County agencies may have substantially resolved differences with an applicant's proposal. Thus, at the hearing, the public is confronted with the option of supporting or opposing an impending decision, without the opportunity to discuss their concerns. This situation tends to polarize views such that approval or denial of the permit becomes the outstanding issue rather than whether the project adversely affects coastal resources and how such effects may be mitigated.

Finally, comments on the sparce attendance at many hearings imply that many projects are non-controversial and may not require a hearing.

F. FINDINGS AND RECOMMENDATIONS

The survey revealed that, generally, the County SMA permit is achieving the objectives of the Hawaii CZM Law by assuring that projects are designed to protect recreational, historical, scenic, and coastal ecosystem resources and mitigate coastal hazards. Although civic and environmental groups criticized the ineffectiveness of the permit in guiding the location of development, it was noted earlier that State land use controls and County general plans and zoning are the primary land use determinants.

The effectiveness of the SMA permit is also supported by DPED's monitoring program. Quarterly reports show a general pattern of compliance with CZM objectives and policies by all Counties, as discussed in Part II.

> Recommendation #4: The County SMA permit systems should continue to be fully supported.

Although the survey acknowledged the overall effectiveness of the SMA permit, it also revealed that there is a lot of concern for streamlining the permit process

and clarifying the role of public participation. Several areas have been identified for potential improvements: modifying SMA boundaries, modifying public participation requirements, exempting activities from permit review, and amending the criteria for determining major and minor permit reviews.

1. Amending SMA Boundaries

The SMA boundary determines, by location, which development activities require an SMA permit. Its delineation, therefore, directly contributes to the effectiveness and efficiency of the permit. If the boundary is overly restrictive, the effectiveness of the permit in addressing coastal issues and concerns may be diminished. On the other hand, if the boundary is too broad, the efficiency of the permit would be reduced as development with insignificant coastal concerns would be unnecessarily delayed by lengthy reviews.

Although the survey did not produce any information as to whether or not the existing SMA boundaries have served their purposes effectively or efficiently, the ongoing evolution of coastal resource management in Hawaii suggests that "fine tuning" of SMA boundaries may be warranted. For example, the City and County of Honolulu is presently contemplating numerous revisions to its SMA boundaries. Influencing factors include the County's experiences with Federal agencies, the recently established "No Pass" line limiting injection wells where groundwater resources may be adversely affected, areas identified as poorly suited for cesspools, areas recently found to be rich in archaeological resources, and overlapping land use policies providing stringent development controls.

The DPED is charged with reviewing proposed boundary contractions. The CZM area criteria developed prior to Federal approval of the program were based on interpretations of the program's objectives and policies in consideration of concerns and information available at that time and will be used to judge the impacts of contractions. With changing perceptions of coastal concerns, availability of new coastal resource information, and as other land use policies are refined, a process for refining the criteria could serve as a basis for reassessing the context of CZM objectives and policies.

> Recommendation #5: The DPED should examine and update SMA boundary criteria to reflect current coastal concerns and recently developed coastal resource information.

2. Public Participation

Public participation in the SMA permit process remains a major concern, the effectiveness of which is difficult to assess. In general, applicants and permit administrators believe that the public infrequently seeks involvement, but when it does, it is usually to oppose projects, often based on issues irrelevant or peripheral to the permit. With respect to the quality of input, it appears that the relationship of the SMA permit to other land use controls contributes to the kinds of public concerns expressed. The SMA is frequently the last chance the public has in voicing opposition to a development proposal. This suggests that the process for soliciting public input through the various planning and decision-making processes may be inadequate.

With regard to frequency of participation, the survey indicated that on numerous occasions the public did not participate in hearings. Another concern is the contested-case proceeding used by the Neighbor Island Counties. The problem of

unattended public hearings can be approached in two ways. First, since only major SMA permits require a public hearing, the determination of whether a proposed development would require a major or minor SMA permit could be used to assure that public input would only be solicited when it would be meaningful, i.e., when there are potential CZM concerns. Considerable time savings would also be accrued. Several alternative criteria for determining major or minor permit processing are discussed in a subsequent section.

A second approach is to allow Counties to make public hearings optional for major SMA permits, based upon an assessment of public interest in a proposed development. This could involve advertising requests for public hearings. The U.S. Army Corps of Engineers uses this method for its Department of Army permit. A major drawback to this approach is that it usually requires additional time for public notification and the scheduling of a hearing if interest is expressed. In addition, there is also a conflict with the requirements for contested-case proceedings of the three Neighbor Island Counties. Only the City and County of Honolulu has expressed that it could implement such an approach.

Several complaints were voiced by applicants that contested-case proceedings were extremely complex and time-consuming. Environmental/civic groups, on the other hand, favored the legal standing it provides them. The Counties' experience with the contested-case procedures has yet to be thoroughly examined. While the concerns expressed by applicants indicate a desire for improvements, the implications of improvements with regard to the broadly encompassing Administrative Procedures Law under which it is required and the practical aspects of soliciting meaningful public input must be considered. This examination was considered to be beyond the scope of this study.

> Recommendation #6: Within the context of the State's permit simplification efforts, the DPED should examine and propose recommendations for strengthening the relationship among the various land and water development permit processes to facilitate meaningful public participation.

> Recommendation #7: In consultation with the Governor's Inter-Governmental Task Force for State Permit Simplification, the DPED should review contested-case experiences and formulate recommendations for improvements.

3. Permit Streamlining

Applicants, in particular, strongly expressed concern with the complex and time-consuming procedures for obtaining the various Federal, State, and County permits and approvals for a project. Several solutions were offerred, such as combining hearings and creating one-stop permit agencies. The legal, political, and practical impediments implied in these solutions, however, preclude short term implementation. The Governor's task force on permit simplification is addressing these issues in simplifying permitting procedures. Only through such a comprehensive perspective can meaningful solutions be formulated and implemented.

Within the immediate scope of SMA permit processing, however, one of the guidelines in Chapter 205A could be an impediment to the coordinated review and approval of the SMA permit, general plan amendments, and zoning changes. The permit sequencing requirements for the SMA permit is outlined in Section 205A-29(b), HRS:

"No agency authorized to issue permits pertaining to any development within the special management area shall authorize any development unless approval is first received in accordance with the procedures adopted pursuant to this part. For the purposes of this subsection, county general plan, state land use district boundary amendments, and zoning changes are not permits."

This provision would appear to allow processing of the SMA permit simultaneously or subsequent to County general plan amendments and zoning changes.

In contrast, however, one of the SMA permit guidelines appears to more explicitly require that general plan and zoning approvals, subdivision codes, and other applicable ordinances be obtained prior to SMA permit approval. Section 205A-25(2), HRS, states:

"No development shall be approved unless the authority has first found:...

(C) That the development is consistent with the county general plan, zoning and subdivision codes and other applicable ordinances."

This provision can be interpreted in several ways. In one sense, it suggests a conflict with Section 205A-29(b) insofar as it implies that approvals related to subdivision codes and other applicable ordinances must be obtained prior to the SMA permit. It also suggests that processing of the SMA permit can proceed as long as final approval is not granted until general plan or zoning change requests are approved. The County of Hawaii interprets this provision to preclude them from accepting an SMA permit application for processing until zoning and general plan approvals have been secured. The County acknowledges that this has occasionally resulted in delays without the benefit of improved decisions.

Recommendation #8: Clarify the SMA guideline requiring consistency with County general plans and zoning to assure that concurrent processing of the SMA permit is permissible. Further, delete the reference to "subdivision codes" and "other applicable ordinances" to eliminate potential contradiction with Section 205A-29(b), HRS:

"§205A-26(2). No development shall be approved unless the authority has first found:

(C) That the development is consistent with the county general plan and zoning amendments. Such a finding of consistency does not preclude concurrent processing where a general plan or zoning amendment may also be required."

4. Exemptions

The efficiency of the SMA permit system is improved by providing exemptions from the definition of "development," as provided in Section 205A-22(A), HRS, to assure that only those activities of concern to CZM will require a major, minor, or emergency

SMA permit. The survey results suggested that there should be additional exemptions and, possibly, modifications to existing ones.

In determining how exemptions might better focus SMA permits on developments of CZM concern, two alternative approaches were considered. The first would amend the existing list of exemptions. Currently, exempted activities are described in Section 205A-22(C), HRS. The other approach is to provide County planning departments with a greater degree of discretion in determining which activities would be exempted. At one extreme, this discretion could eliminate the need for a list of exemptions as they would be determined on a case-by-case basis. Alternatively, the existing list of exemptions could be broadened to encompass a range of activities that generally do not raise coastal concerns. Counties would exercise their discretion in requiring an SMA permit when unusual circumstances suggest that coastal concerns exist for a particular proposal.

Discussions of the two approaches with County SMA officials indicated that allowing County discretion in determining exemptions would result in constraints outweighing potential benefits. Discretionary determinations would more effectively target SMA permits on activities of CZM concern, but would probably be subject to suspicion inasmuch as the public would not be involved. Moreover, the case-by-case review would be a greater burden on the County CZM agency. Thus, only amendments to the existing list of exemptions was pursued.

County officials offered different opinions about which activities should be exempted as a result of slight differences in their procedures, interpretations of the existing exemptions, and relationships of their SMA permits to other County authorities. Among the exemptions considered were utilities installed along existing utility corridors, non-structural improvements to existing structures, and reconstructions following natural disasters. The latter was highlighted as a result of Kauai's experience with reconstruction after Hurricane Iwa.

> Recommendation #9: Add the following exemptions, as underscored below, to the definition of development, Section 205A-22, HRS:
>
> Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors. Low profile utilities might include fire hydrants but not utility poles.
>
> Subdivision of land into four or fewer parcels when no associated construction activities are proposed. Subdivisions of this scale do not substantially increase density.
>
> Structural and non-structural improvements to existing single-family residences including additional dwelling unit, where otherwise permissible. This would explicitly extend the exemption for construction of single-family dwellings to related improvements such as patio enclosures, garages, ohana dwellings, and re-roofing.
>
> Non-structural improvements to existing commercial structures. Examples include facade renovation, landscaping, and sidewalk construction.

With respect to reconstruction following natural disasters, the Counties felt better management could be attained by requiring an SMA emergency permit rather than exempting such activities altogether.

Recommendation #10: Amend Section 205A-22,(5), HRS, to read:

"Special Management area emergency permit" means an action by the authority authorizing development in cases of emergency requiring immediate action to prevent substantial physical harm to persons or property or to allow the reconstruction of structures damaged by natural hazards to their original form, provided that such structures were previously found to be in compliance with requirements of the Federal Flood Insurance Program. (Addition underscored)

5. Major/Minor Permit Criteria

The criteria for determining which development activities must undergo the rigorous scrutiny of the major SMA permit process have significant implications on the effectiveness of the permit in achieving its objectives as well as on the time and cost considerations to developers and the permit administering agency. The SMA permit employs both a cost criterion and a significance determination in distinguishing between major and minor permit processing. These are streamlining measures which presume that developments qualifying for minor permit review are not likely to have significant CZM concern. The criteria are important to the applicant when considering the differences in processing procedures. Major permits involve detailed County review, public notice, public hearings, and commission or council approval, with average processing time ranging from three to six months. Minor permits, on the other hand, are routinely and administratively processed from within a few days to several weeks. Of the SMA permits issued to date, about two thirds are minor permits.

The cost criterion is of particular concern because all development activities above it are automatically required to undergo major permit processing, whether or not adverse effects are anticipated. Development activities below the cost criterion are generally processed as minor permits, although County Planning Departments may require major permit processing if they anticipate significant adverse environmental or ecological effects. The figure below diagrams this relationship and shows the total number of permits issued through 1982.

	<$65,000	>$65,000
Potential Adverse Effect	MAJOR (7)	MAJOR (805)
No Adverse Effect	MINOR (2,145)	

When asked what the cost criteria should be, survey respondents greatly favored setting the cost criterion at a higher level. Even at the current $65,000 level, more than 50% of the respondents rated it as being inadequate while less than 25%

believed it was adequate. Sample and respondent bias toward applicants should be considered in interpreting this result. In the developer/applicant category, there was near unanimous support for raising the cost criterion from anywhere between $100,000 and $500,000. Government agencies and civic/environmental groups expressed concern that the cost criterion alone was inadequate for judging the significance of an action. They felt that it was premature to judge whether or not the present cost criterion is adequate since it has been in effect for less than a year.

To assess the adequacy of the cost criterion as an indicator of significant impact, DPED's monitoring data for the period 1980 to 1982 were examined. The data suggest that up to 40% of the major permits issued were for development activities with insignificant effects of CZM concern. Projecting this percentage to all of the 805 major permits issued through 1982 suggests the potential magnitude of unnecessary major permits processed. This legitimately supports concerns of efficiency and effectiveness for applicants and permitting agencies, and it may also explain some of the concerns about the lack of public participation at many of the major permit hearings.

The following are assessments of several alternatives for improving the major/minor permit criteria to more effectively correlate significance of impact to major and minor permit reviews:

a. Significant Impacts Only

This alternative calls for eliminating the cost criterion entirely. The County agency would be required to make a case-by-case determination of a proposed project's effects. If it is determined that a substantial adverse environmental or ecological effect is likely to occur, a major permit would be required. If not, a minor permit would be issued administratively. The figure below diagrams this relationship. To assure consistency in County determinations, guidance, perhaps in the form of legislatively adopted guidelines or mutually acceptable significance standards, would help to mitigate potential public concern about the degree of discretion this alternative affords the Counties.

Significant Impacts Only

Potential Adverse Effect	Major
No Adverse Effect	Minor

There were mixed feelings expressed about whether the cost criterion should be eliminated in favor of the "significance" criterion. While most agreed that significance of impact is the most important criterion, developers/applicants generally felt that without a cost criterion, agency discretion might favor processing more projects through the SMA major permit system. Two agencies indicated that the cost criterion was a useful guide to both the applicant and agency. Others felt that more detailed guidelines or a listing of actions for distinguishing between major and minor projects would be appropriate.

The application of significance criteria or standards in determining major or minor permit processing is ideal in terms of both effectiveness and efficiency. It is,

however, probably the most difficult alternative to implement. On one hand, specificity must be provided to dispel potential public mistrust of agency decisions. On the other, formulating discretion-free standards or criteria may be impossible because each project may be unique with respect to environmental or ecological effects.

In the long term, computerized information could be used as a basis for major/minor permit distinctions. The Hawaii CZM Program has computerized environmental and coastal resource information on H-PASS. The Coastal Resource Data Base was developed on a demonstration basis for identifying coastal resources and hazards located in plats of land identified by tax map key numbers. Further refinements of the system and correlation of potential impacts to the type of activities proposed could help provide "early warning" of potentially significant actions.

The major advantages and constraints of this alternative can be summarized as follows:

Advantages: By eliminating the arbitrary cost criterion and focussing on a project's effects, greater efficiency and effectiveness in permit processing could be achieved.

Constraints: Guidelines or significance standards for determinations would be difficult to develop given the broad range of developments encompassed by the permit, multiple resource objectives, and the diversity of coastal environments. Moreover, it may be difficult to obtain agreement on these guidelines or standards among the diverse public and private interests.

Without widely accepted guides, public notification for all minor permits could be demanded since the public's perception of the project's effects might differ from the agency's determination. An additional procedural requirement might then be necessary for all minor permits processed which would be contrary to permit streamlining.

b. Raise Cost Criterion

Raising the cost criterion would achieve incremental reductions in the number of major permits reviewed according to rates shown in the table below. Average reductions of approximately 10% in the volume of major permits could be achieved for every $50,000 increase in the cost ranges up to $200,000. The data also indicate that the volume of major permits processed was reduced by approximately 10% when the cost criterion was raised by $40,000 in 1982.

MAJOR PERMITS

Cost Range	No. Permits	Percent
$0 - 25,000	7	1.5%
$25 - 65,000	49	10.4%
$65 - 100,000	51	10.8%
$100 - 150,000	43	9.1%
$150 - 200,000	37	7.9%
$200 - 500,000	99	21.0%
$500,000 - over	185	9.3%

With respect to the significance of impact, an assessment of 1980-1982 monitoring data for which cost figures were available suggests that the proportion of major permits with insignificant impacts would continue to be substantial. Even if the cost criterion was $500,000, perhaps as much as 30% of the projects requiring major permits would have insignificant impacts.

Advantages: Reductions in the volume of major permits processed could be achieved.

The change can be implemented without affecting existing permitting procedures.

The change would be widely accepted as an adjustment to accommodate inflation while essentially maintaining the existing system.

Constraints: Major/minor permit determinations will continue to rely on a rather poor indicator of adverse environmental impact, leaving the effectiveness question unanswered.

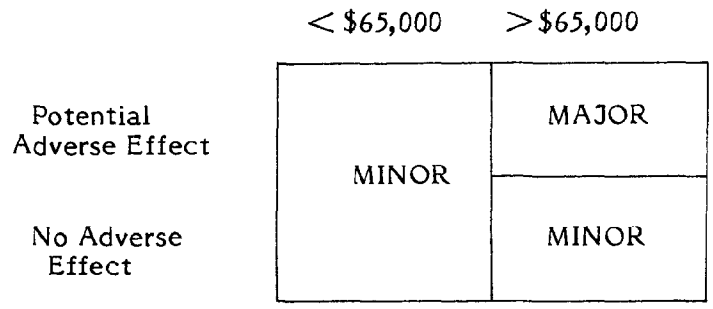
If raised to the point where major/minor determinations for activities below the cost criterion are questioned, the need for guidance in such determinations as well as public notification may be warranted.

c. And/Or Reversal

This alternative would involve the reversal of the conjunctives in the definitions of major and minor permits in Chapter 205A, HRS, to read:

> "Special management area minor permit" means an action by the authority authorizing development, the valuation of which is not in excess of $65,000 or which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects. (Emphasis added)
>
> "Special management area use permit" means an action by the authority authorizing development, the valuation of which exceeds $65,000 and which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects. (Emphasis added)

The effect of this reversal would shift the discretionary review of County planning departments to those projects in excess of the cost criterion. All projects below the cost criterion, regardless of effect, would be processed for minor permits. Those above the cost criterion will be reviewed as to the significance of potential adverse environmental effects. If determined to be significant, then the project would be processed as a major permit. If not, then it may be processed as a minor permit. The relationship of this alternative is shown below.



Given the discretion the County Planning Departments would have under this alternative, the adoption of guidelines or significance standards for distinguishing major from minor permits over $65,000 may be necessary. Another method to reduce potential mistrust of discretionary decisions is to require public notification of all minor permit determinations. Public objection would require processing as a major permit.

This alternative would also require the County Planning Departments to deny minor permits for projects under $65,000 (left box in above figure), without public input, if they violate CZM objectives and policies and SMA guidelines. Under existing criteria, permits with potentially adverse effects are elevated to and processed as major permits.

Advantages: Greater efficiency in SMA permit processing would be achieved as projects above the cost criterion with insignificant impacts would be processed through the minor permit system.

Constraints: To minimize County discretion in making major/minor determinations, guidelines or significance criteria may be necessary. Alternatively, the public could be notified of and allowed to object to minor permit determinations for projects above the cost criterion.

County SMA agencies would be responsible for denying minor permits for projects below the cost criterion without public input.

d. Discretionary Determination and Public Notification for Projects Above $65,000

This alternative would preserve the current system of permit processing for projects below the cost criterion, i.e., only those with significant impacts would require major permit review. The remainder would be processed through minor SMA permits. For projects above the criterion, the County Planning Departments would have to determine whether substantial adverse effects area anticipated. If so, they would be processed through the major permit system. If not, the applicant would have the option of filing for a major permit or providing public notification that he will be seeking a minor permit. With respect to the latter, if after a prescribed period of time, there are no public objections, the applicant would be issued a minor permit. If an objection is raised, however, a major permit would be required. The relationships involved in this alternative are shown below.

	<$65,000	>$65,000
Potential Adverse Effect	MAJOR	MAJOR
No Adverse Effect	MINOR	MINOR*

*With public notification

Advantages: More appropriate differentiation of proposed developments for processing under major or minor SMA permits, resulting in greater efficiency in time and effort for applicants, agencies and the public.

Unlike the and/or reversal alternative, the processing of projects under $65,000 would remain unchanged. The County Planning Departments would not be charged with the responsibility of denying minor permits.

No formally adopted guidelines or significance standards would be required due to the opportunity for public objection to a minor permit determination.

Constraints: The requirement for public notification is an additional step for projects requiring major permits due to public objection. In the existing process, such projects would automatically be reviewed under a major permit.

The streamlining effect of this alternative could be negated if frivolous public objections are routinely raised.

Recommendation #11: Raise the cost criteria from $65,000 to $100,000 as an interim measure, and examine and formulate guidelines for Counties to base determinations of major and minor permit requirements.

The increase in the cost criterion can be implemented without procedural changes by the Counties and would have the most predictable results--reduction of the volume of major SMA permits by approximately 10%.

Support for this increase can be conceptually justified by economic inflation factors and the minimal change in County discretion implied. This alternative, however, does not directly address the problem that a large percentage of major permits being processed are for projects with insignificant environmental and ecological effects.

In the long term, the cost criterion should be eliminated in favor of determining major/minor permit processing based on significance of impact. Until guidelines can be formulated and demonstrated, however, incremental increases of the cost criterion are the simplest ways of relieving the burden of major permit reviews on applicants and the Counties.

The alternatives involving "and/or reversal" and discretionary reviews of projects above $65,000 are considered viable and should be pursued if acceptable guidelines or significance standards cannot be developed. A major drawback at this point is the substantial changes in County permitting procedures they entail. For this reason, they were dismissed as interim measures. Moreover, the potential time savings that may accrue could be reduced by the time requirements for public notification and response. Abuse of the process via routine and frivolous public opposition could result in even greater delays.

IV. CONCLUSION

The Hawaii CZM law has been an effective coastal management tool. Its influence on development is particularly evident in the County-administered Special Management Areas where resource-sensitive design features are prominent. While they may not be in the immediate economic interest of developers, these features assure that residents and visitors alike can continue to benefit from diverse and valuable coastal resources and opportunities.

Perhaps less evident but important, the CZM law impacts pervasively in the ocean and administrative land areas. Monitoring and enforcement of all relevant State and County actions, and Federal actions pursuant to the Federal consistency provisions of the National CZM Act, further assure protection and proper development of coastal resources.

Federal support of the Hawaii CZM Program has been the key to its effectiveness. In addition to financing mandated DPED and County CZM functions, considerable progress has been made with Federal aid in improving coastal resource management capabilities. Although continued Federal fiscal support is uncertain, the prospects for use of Federal revenues from outer continental shelf leases remain hopeful. Eligibility for this revenue sharing program is contingent upon maintaining a Federally approved program.

With respect to the effects of permit processing on development, the impacts of the Hawaii CZM law are indistinguishable among the State's plethora of land and water permits. The law is unique in that it establishes a policy to "facilitate timely processing of applications for development permits and resolve overlapping or conflicting permit requirements." Through the State Task Force for Inter-Governmental Permit Simplification, supported by the CZM Program, the encompassing concerns for statewide permit simplification are being addressed, including several pertaining to the relationship of the Hawaii CZM law to other land and water use programs. In addition, several opportunities for streamlining the SMA permit are available as discussed in this report. Some can be achieved through amendments to the Hawaii CZM law, while others can be pursued through DPED's efforts to improve their implementation.

The Hawaii CZM law embodies a unique approach to coastal management. While protecting public interests in the balance between development and conservation of coastal resources, it also strives to reduce the impact of permit procedures on development opportunities. The "network" arrangement requires an inter-agency perspective to facilitate coordination. Moreover, the law allows the State to obtain available Federal fiscal resources to help address State concerns in these areas. Thus, the law inherently assures that coastal management will evolve and improve to remain relevant to ever-changing coastal opportunities and issues.

APPENDIX A

SPECIAL MANAGEMENT AREA PERMIT

QUESTIONNAIRE RESULTS

To gauge perceptions of individuals and organizations with direct interest in or experience with the SMA permit process, a comprehensive survey was undertaken in January, 1983. A questionnaire soliciting opinions and impressions on diverse aspects of the SMA permit was distributed to a range of private developers and applicants, State, County and Federal agencies, and environmental and civic interest groups. The results of this questionnaire are summarized here.

RESPONDENT INFORMATION

1. WHICH OF THE FOLLOWING BEST DESCRIBES YOUR INVOLVEMENT IN THE SMA PERMIT PROCESS?

Of 231 questionnaires mailed, 69 responded, yielding about a 30% response rate overall. The breakdown into three response groups is as follows:

	Mailed		Responded	Response Rate
Applicant:	130	(56%)	45	35%
Agency:	51	(22%)	16	31%
Env./Civic:	50	(22%)	8	16%

No. Responded		
		Developer/landowner Agent or consultant for the above
45	(65%)	Agent or consultant for County development projects Agent or consultant for State development projects
		SMA permit administrator
16	(23%)	Other County permit or reviewing agency State permit or reviewing agency
		Environmental interest organization
8	(12%)	Community or civic organization Affected landowner Interested citizen (non-affiliated)

2. IN WHAT CAPACITY AND APPROXIMATELY HOW MANY TIMES HAVE YOU PARTICIPATED IN THE SMA MAJOR PERMIT PROCESS?

	Number of Times 1 - 2	3 - 5	5 or more
AS AN APPLICANT.....	10	10	8
AS AN AGENT FOR THE APPLICANT	4	3	11
PROVIDED TESTIMONY.....	4	9	12
ATTENDED PUBLIC HEARING ..... (only if as an interested observer)	4	9	5
INVOLVED IN LAWSUIT OR CONTESTED CASE PROCEEDING.....	8	1	3

3. IN WHICH COUNTY SMA PERMIT PROCESSES HAVE YOU BEEN INVOLVED?

[36] HONOLULU [23] MAUI [27] HAWAII [18] KAUAI

(Respondents with involvement in all counties: 9)

SMA Permit Impacts on Development

HOW EFFECTIVE HAS THE SMA PERMIT BEEN IN:	Very	Moderately	Some-what	Not at all	Don't Know
1. GUIDING THE LOCATION OF DEVELOPMENT ALONG THE COASTLINE?	8%	31%	28%	16%	16%

COMMENTS: Generally, agencies and applicants who commented tended to agree that the SMA permit is not the proper vehicle to guide developments along the shoreline; instead, repeated references were made to County general and development plans, and zoning as the primary land use guidance mechanisms. Responses of the environmental/civic group to this question (3 out of 3) all noted the failure of the SMA permit in guiding development.

2. IMPROVING THE DESIGN OF PROPOSED DEVELOPMENTS?	10%	24%	28%	24%	13%

COMMENTS: Of the four agency comments to this question, two cited the absence of specific design criteria in the SMA law, one commented that proposals are simply presented on a "take-it-or-leave-it basis", and one noted improvement in flood hazard design considerations. Applicant comments generally noted little or no improvement in design as the result of the permit process.

3. AFFORDING AMPLE OPPORTUNITY FOR THE PUBLIC TO PARTICIPATE?	40%	27%	21%	5%	8%

COMMENTS: Of agency responses, one cited satisfaction with the opportunity for the public to participate, while the other two cited the oftentimes post-hoc nature of public reaction and general apathy or ignorance of development until construction is impending, i.e. too late in the process. Three civic/environmental comments reflected dissatisfaction with the hearing process in terms of the outcomes of the decisions. Applicant comments were generally negative. Five noted potential overlaps and redundancies with other permit processes, two said that testimony unrelated to permit concerns was presented, two cited abuse of the hearing process to stop development, and one cited poor attendance.

HOW EFFECTIVE HAS THE SMA PERMIT BEEN IN:	Very	Moderately	Some-what	Not at all	Don't Know
4. AVOIDING PERMANENT LOSS OF VALUABLE RESOURCES.....	9%	24%	30%	18%	19%
5. ENSURING ADEQUATE BEACH AND SHORELINE ACCESS.....	28%	30%	24%	5%	13%
6. ENSURING ADEQUATE PUBLIC RECREATIONAL AREAS	12%	25%	31%	12%	19%
7. ENSURING ADEQUATE SEWAGE TREATMENT FACILITIES.....	12%	18%	22%	19%	28%
8. MINIMIZING ALTERATIONS TO LANDFORMS & VEGETATION WHICH AFFECT WATER, SCENIC AND RECREATION AREAS.....	10%	24%	36%	18%	12%
9. PROTECTING HISTORIC SITES AND RESOURCES.....	19%	33%	30%	2%	16%
10. MITIGATING FLOOD, TSUNAMI, AND OTHER HAZARDS.....	9%	27%	27%	19%	18%
11. PROTECTING NATURAL ECOSYSTEMS.....	13%	30%	18%	12%	27%
12. CONCENTRATING COASTAL DEVELOPMENTS IN SUITABLE LOCATIONS (TO MAINTAIN COASTAL OPEN SPACE).....	9%	18%	28%	22%	22%
13. ENCOURAGING NONCOASTAL DEPENDENT DEVELOPMENT TO LOCATE INLAND.....	5%	18%	25%	27%	25%

14. PROVIDING SETBACKS, OPEN SPACE.....	19%	22%	28%	15%	15%
15. ASSURING BUILDING HEIGHT, MASS, AND OTHER VIEWPLANE CONSIDERATIONS MAKAI OF THE COASTAL HIGHWAY.....	16%	21%	33%	12%	18%
16. MEETING THE NEEDS FOR COASTAL DEPENDENT ECONOMIC USES.....	6%	16%	21%	21%	36%
17. THE TIMELY APPROVAL OF ECONOMICALLY IMPORTANT PROJECTS.....	5%	16%	25%	33%	21%

18. DO YOU HAVE ANY COMMENTS ON THE PUBLIC HEARING/PARTICIPATION PROCESS?

Similar concerns were expressed as with question No. 3. Additional remarks by agencies highlighted the poor public attendance at hearings. Civic groups expressed dissatisfaction citing poor advance notice and the holding of hearings during the daytime rather than evenings. Applicant responses again cited redundancies with other permit hearings and irrelevant testimony, while some questioned the costs involved, particularly with contested case hearings.

19. HAVE YOU PARTICIPATED IN ANY CONTESTED CASE SMA HEARINGS? WHERE? ANY COMMENTS?

15 respondents (24%) indicated that they had participated in contested case hearings. Only a few specific comments were made in relation to case-specific experiences, although the cost factor was again highlighted from applicant responses.

20. IS THE PRESENT $65,000 COST CRITERION IN THE PERMIT ADEQUATE FOR DISTINGUISHING A MAJOR FROM A MINOR PROJECT?

Yes	17	(25%)
No	40	(58%)
Don't know	4	(6%)
No Response	8	(12%)

Agencies commented that cost should not be the sole factor in distinguishing permit types. Applicant comments overwhelmingly suggested that the figure is too low, and made many suggestions for raising the value limit anywhere from 100,000 to 500,000. Civic groups generally suggested that the critieria was too low or arbitrary and is not an effective criterion for determining the significance of development.

21. DO YOU THINK THERE SHOULD BE ANY COST CRITERION AT ALL? (PRESENT LAW SPECIFIES THAT A PROJECT CAN BE ISSUED A MINOR PERMIT ONLY IF IT IS LESS THAN $65,000 AND HAS NO SIGNIFICANT IMPACTS -- IT HAS BEEN SUGGESTED THAT THE SIGNIFICANT IMPACTS CRITERION IS SUFFICIENT)

Yes (Retain)	22	(32%)
No (Delete)	22	(32%)
Don't know	8	(12%)
No Response	17	(25%)

Three agencies commented that it's a good rule of thumb for expeditious processing while four suggested that the significance criteria alone is sufficient. Applicant/developer comments were evenly divided. Those who felt the cost criterion should be kept expressed distrust with agencies subjectively determining significance. Those who felt it should be deleted, however, qualified this with the need for more specific guidelines in determining significance.

22. BELOW IS A LIST OF DEVELOPMENT ACTIVITIES WHICH ARE CURRENTLY EXEMPTED FROM THE SMA PERMIT. DO YOU HAVE ANY SUGGESTIONS FOR ADDITIONAL CATEGORIES OR DELETIONS?

- SINGLE FAMILY RESIDENCE
- MAINTENANCE DREDGING OF STREAMS
- ZONING VARIANCES
- DEMOLITION OF STRUCTURES
- TRANSFER OF TITLE TO LAND
- MAINTENANCE OF ROADS AND HIGHWAYS
- MAINTENANCE OF UTILITIES
- MAINTENANCE OF EXISTING STRUCTURES
- AGRICULTURE OR AQUACULTURE
- EASEMENTS OR COVENANTS TO LAND
- SUBDIVISION OF LAND INTO LOTS OF MORE THAN 20 ACRES

Suggested Additions:

Underground utilities
Land subdivision without improvements
Public facilities
Exemptions covered in the EIS law of Chapter 343, HRS
Replacement of utilities
Utility poles, lines, structures
Temporary offices, shacks, and models for sales offices
Minor changes to buildings and infrastructures
Emergency repairs to apartments and duplexes in beach areas
Seawalls, if necessary to protect property from wave damage
Landscaping and site work of a minor nature
Beach maintenance and cleaning
Beach park development
General plan change
Minor alteration of utility facilities
Utility construction

Suggested Deletions:

don't exempt agriculture and aquaculture
single family residences should not automatically be exempt
some zoning variances should not be exempted

23. ARE THE SMA POLICIES AND GUIDELINES CLEAR ENOUGH FOR DECISION-MAKING? IF NOT, WHAT SUGGESTIONS WOULD YOU HAVE FOR IMPROVEMENT?

Yes	31	(45%)
No	6	(9%)
Don't know	3	(4%)
No Response	29	(42%)

Only a few comments were provided here. Suggested improvements include clarifying that the role of the permit is not a land use control regulation, as zoning is. Also, the need for clarification of various terms such as "permits", "environment", "elimination of planning options", "cumulative impact" and "compelling public interest" was expressed. Further specification of how development should be controlled in hazard areas was also suggested.

24. DO YOU FIND THE SMA LAW/RULES AND REGULATIONS ADEQUATE? IF NOT, HOW WOULD YOU IMPROVE THEM?

Yes	25	(36%)
No	12	(17%)
Don't know	2	(3%)
No Response	30	(43%)

Non-applicant comments herein varied considerably. One cited that the environmental criteria is not sufficiently comprehensive, while another felt that various permit requirements could be combined to reduce, for example, hearing requirements. The lack of a contested case hearing procedure for Oahu was also mentioned. Applicant comments generally reflected the need for improvements with respect to expediting the review process, better definition of significance criteria, narrowing of the SMA boundaries closer to the shoreline, and duplicative review requirements.

25. DO YOU HAVE ANY OTHER GENERAL COMMENTS OR SUGGESTIONS REGARDING THE SMA PERMIT PROCESS?

A wide range of comments and suggestions were offered. From agencies, the overlaps of some requirements such as federal consistency, SMA, and shoreline setback were mentioned; also perceived inconsistencies between projects and among counties' interpretation/implementation of the policies and guidelines were noted. One agency felt that the SMA law should be applied to any non-military uses of Federal lands. Civic group responses included the unwillingness of DPED to enforce the SMA law and notations of "bad" developments in specific areas.

From applicant and development interests, many comments reflected the redundancies in permit review requirements and suggested the possibility of incorporating the SMA requirements into other permit or regulatory systems, and the need to streamline the permit process. One cited the need again for a review and reduction of the boundaries, while two cited unnecessary or ineffective public notification.

ADDITIONAL QUESTIONS FOR APPLICANTS ONLY!!

26. DOES THE KNOWLEDGE THAT AN SMA PERMIT WILL BE REQUIRED AFFECT YOUR DESIGN PLAN IN ANY WAY? IF SO HOW?

Yes	13
No	6
No Response	26

While most responded that yes, the permit does affect their design plans, several referred to the time and cost considerations for permit processing rather than physical design changes. Typical of many responses, "we try to formulate plans which are respectful of the objectives of the SMA law." Time, money, scheduling, potential delays, and the need for "cost efficient aesthetics" were also cited as affecting their design plans.

27. HOW MANY AND WHAT TYPE OF DESIGN ALTERATIONS OCCUR AS THE RESULT OF NEGOTIATIONS WITH THE COUNTY OR AS A RESULT OF CONDITIONS IMPOSED THROUGH THE APPROVAL PROCESS? PLEASE DESCRIBE.

None	2
1 to 5	11
No Response	32

Several responded that there were little actual changes in project design. Of those who mentioned types of alterations, they included: configuration and design of structures; landscaping; off-site improvements; floodproofing; building height and mass; view corridors; public access; various building appearance considerations such as rooflines and color; setback from shoreline; and location of accessways.

28. ARE THERE ANY PERCEIVED REDUNDANCIES IN SMA ENVIRONMENTAL IMPACT ASSESSMENT REQUIREMENTS AND OTHER PERMIT REQUIREMENTS? IF SO, PLEASE IDENTIFY.

Yes	11
No	3
No Response	31

Applicant responses were unanimous in citing the many redundancies among a range of environmental and land use permit requirements at all levels of government. Specific permit systems mentioned include special design districts, general plan, zoning, cluster and planned development, subdivision, Department of Health permits, EIS, Corps of Engineers permits, conservation district use applications, shoreline setback, and federal consistency. Sample comments include: "there are too many environmental agencies that are duplicating the work, "Yes!!!! very definitely," and "often review time is doubled inasmuch as the same concerns are addressed throughout the land use/zoning process".

29. HOW MUCH ADDITIONAL TIME, IF ANY, IS ADDED TO THE DEVELOPMENT SCHEDULE IF AN SMA MAJOR PERMIT IS REQUIRED?

1 - 3 months	8
4 - 6 months	7
7 - 9 months	7
Over 10 months	3

Responses generally ranged from one to nine months. Beyond this, several cited that the need for an EIS can add up to a year's additional time to complete the preparation and review process.

30. HOW HAS THE SMA PERMIT AFFECTED YOUR DEVELOPMENT COSTS? PLEASE EXPLAIN IN TERMS OF PERCENTAGE OF PROJECT COSTS AND TYPE OF PROJECT.

1% - 5%	4
6% - 10%	1
11% - 15%	2
16% - 20%	1
Over 20%	1

Few respondents were able to provide specifics to the question posed, although there was general consensus that costs did increase significantly with the permit requirement. Six responded in terms of time delays as a significant cost, three mentioned EIS costs. Still others mentioned ongoing costs associated with the maintenance, liability and security for public accessways required as a condition of SMA permit approval.

31. HAS THE SMA PROCESS ENHANCED THE VALUE OR MARKETABILITY OF YOUR PROJECT(S)? IF SO, TO WHAT DEGREE OR IN WHAT WAY?

Yes	2
No	18
Don't Know	1
No Response	23

The general consensus of the several comments received indicated that the SMA permit did not enhance the project's marketability. One comment mentioned that valued privacy was lost through the provision of public access while another suggested that the permit resulted in a smaller number of developments which could be marketed at a higher price. Also, time delays in processing a permit were mentioned as a factor in causing a developer to miss his market potential due to economic changes.

32. ARE THE SMA GUIDELINES SUFFICIENTLY CLEAR TO MAKE DECISION-MAKING PREDICTABLE? IF NOT, WHAT IS UNCLEAR?

Yes	12
No	9
Don't Know	1
No Response	23

33. DO YOU HAVE ANY OTHER SPECIFIC COMMENTS OR SUGGESTIONS REGARDING THE SMA PERMIT PROCESS?

Comments to this question were included as part of question No. 25.